

An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund must be in the form of a trust. If the other guarantee method is used, no surety or insurance may be combined with the external sinking fund. The surety, insurance, or other guarantee provisions must be as stated in paragraph (e)(2) of this section.

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(5) In the case of licensees who are issued a power reactor license under part 50 of this chapter or ISFSI licensees who are an electric utility, as defined in part 50 of this chapter, with a specific license issued under this part, the methods of 10 CFR 50.75(b), (e), and (h), as applicable. In the event that funds remaining to be placed into the licensee's ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate making authority, the licensee must make changes to provide financial assurance using one or more of the methods stated in paragraphs (1) through (4) of this section.

(f) * * *

(3) * * *

(ii) All areas outside of restricted areas that require documentation under § 72.30(f)(1).

(4) Records of the cost estimate performed for the decommissioning funding plan and records of the funding method used for assuring funds are available for decommissioning.

(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar year, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar year.

(2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days of the occurrence.

(3) Within 30 days of taking the actions required by paragraph (g)(1) or (g)(2) of this section, the licensee must provide a written report of such actions to the Director, Office of Federal and State Materials and Environ-

mental Management Programs, and state the new balance of the fund.

§ 72.32 Emergency Plan.

(a) Each application for an ISFSI that is licensed under this part which is: Not located on the site of a nuclear power reactor, or not located within the exclusion area as defined in 10 CFR part 100 of a nuclear power reactor, or located on the site of a nuclear power reactor which does not have an operating license, or located on the site of a nuclear power reactor that is not authorized to operate must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee's facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of

the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.¹⁰

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting semiannual communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire drills shall be conducted annually. Semiannual communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercise.

(ii) Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the

response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include a brief description of the arrangements made for requesting and effectively using offsite assistance on site and provisions that exist for using other organizations capable of augmenting the planned on-site response.

(16) Arrangements made for providing information to the public.

(b) Each application for an MRS that is licensed under this part and each application for an ISFSI that is licensed under this part and that may process and/or repackage spent fuel, must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts" or "site area emergencies."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers on site, and a description

¹⁰These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499 or other State or Federal reporting requirements.

of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.¹¹

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting quarterly communications

checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire Drills shall be held semiannually. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises.

(ii) Participation of offsite response organizations in the biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include the following:

(i) A brief description of the arrangements made for requesting and effectively using offsite assistance on site and provisions that exist for using other organizations capable of augmenting the planned onsite response.

¹¹ These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other State or Federal reporting requirements.

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(ii) Provisions that exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iii) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are available.

(v) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vi) Radiological Emergency Response Training has been made available to those offsite who may be called to assist in an emergency onsite.

(16) Arrangements made for providing information to the public.

(c) For an ISFSI that is:

(1) located on the site, or

(2) located within the exclusion area as defined in 10 CFR part 100, of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

(d) A licensee with a license issued under this part may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

[60 FR 32441, June 22, 1995]

§ 72.34 Environmental report.

Each application for an ISFSI or MRS license under this part must be accompanied by an Environmental Report which meets the requirements of subpart A of part 51 of this chapter.

10 CFR Ch. I (1–1–12 Edition)

Subpart C—Issuance and Conditions of License

§ 72.40 Issuance of license.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI or MRS design complies with subpart F;

(2) The proposed site complies with the criteria in subpart E;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this part;

(5) The applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) Except for DOE, the applicant for an ISFSI or MRS is financially qualified to engage in the proposed activities in accordance with the regulations in this part;

(7) The applicant's quality assurance plan complies with subpart G;

(8) The applicant's physical protection provisions comply with subpart H. DOE has complied with the safeguards and physical security provisions identified in § 72.24(o);

(9) The applicant's personnel training program complies with subpart I;

(10) Except for DOE, the applicant's decommissioning plan and its financing pursuant to § 72.30 provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.32;

(12) The applicable provisions of part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that: (i) The activities authorized by the license can be conducted without